

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MICHAEL L. BUESGENS,
Plaintiff,
v.
BEVERLY HART, et al.,
Defendants

No. C-08-5710 MMC

**ORDER DENYING PLAINTIFF'S MOTION
FOR LEAVE TO FILE APPEAL IN
FORMA PAUPERIS; DIRECTIONS TO
CLERK**

Before the Court is plaintiff's "Motion for Leave to File Appeal in Forma Pauperis Number 2," filed February 9, 2009, in which plaintiff states he "is appealing this Court's order denying his motions for judicial notice of adjudicative facts." Having read and considered plaintiff's motion, the Court rules as follows:

Attached as an exhibit to plaintiff's motion is a copy of the Court's January 23, 2009 order, in which plaintiff has circled the finding made therein on page 2, lines 21-24, which finding, in full, reads as follows: "On various dates beginning on January 7, 2007 and ending on January 16, 2009, plaintiff filed a total of sixteen motions for judicial notice. Each such motion is hereby DENIED, for the reason there is no pending motion as to which it is necessary or appropriate for the Court to take judicial notice of any fact." Consequently, it appears plaintiff seeks to appeal the Court's January 23, 2009 order to the extent the Court denied plaintiff's sixteen motions for judicial notice.

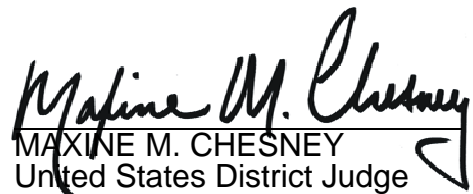
1 Plaintiff's motion to proceed in forma pauperis on an appeal of the Court's January
2 23, 2009 order denying plaintiff's motions for judicial notice is hereby DENIED for the
3 reason any such appeal would be frivolous. Specifically, the Court's January 23, 2009
4 order is interlocutory in nature, and is not the type of interlocutory order from which a party
5 may appeal before entry of a final judgment. See 28 U.S.C. § 1292(a) (identifying types of
6 interlocutory orders that may be appealed). Moreover, plaintiff has failed to identify any
7 issue he arguably could raise on appeal. See Fed. R. App. Proc. 24(a)(1) (providing party
8 who seeks to appeal in forma pauperis must file affidavit stating "issues that the party
9 intends to present on appeal"); see, e.g., Rolland v. Primesource Staffing, L.L.C., 497 F.3d
10 1077, 1079 (10th Cir. 2007) (denying application to proceed in forma pauperis on appeal
11 where plaintiff "failed to show the existence of a reasoned, non-frivolous argument on the
12 law and facts in support of the issues raised on appeal").

13 Plaintiff is hereby informed he may file a motion to proceed in forma pauperis in the
14 Ninth Circuit Court of Appeals. See Fed. R. App. Proc. 24(a)(5).

15 The Clerk of the Court is hereby DIRECTED to send a copy of this order to the Ninth
16 Circuit Court of Appeals. Further, plaintiff having failed to file a separate notice of appeal
17 from the Court's January 23, 2009 order, the Clerk is DIRECTED to provide to the Ninth
18 Circuit Court of Appeals a copy of the instant motion for any determination as to whether
19 said filing constitutes a notice of appeal.

20 **IT IS SO ORDERED.**

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22 Dated: February 19, 2009

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MAXINE M. CHESNEY
United States District Judge